IN THE HIGH COURT OF JUDICATURE AT BOMBAY
SIDE JURISDICTION
CRIMINAL APPLICATION NO.7336 OF 2005
WITH
CRIMINAL APPLICATION NO.7337 OF 2005

Bhupendra J. Patel ...Applicant.
V/s.
Janak Gokuldas Ashar ...Respondent.

Mr.Rajiv Pande with Sanjeev Punalekar, advs.i/b PRS Legal for the Applicant.

Ms.S.V.Gajare, APP for the State.

CORAM: J.H.BHATIA, J.
DATE : 16th April, 2007.

P.C.:

1. Heard Mr.Rajiv Pandey the learned counsel for the applicant.

2. This is an application seeking leave to prefer appeal against the order of acquittal for the offence punishable under Section 138 of the Negotiable Instruments Act in criminal case no.208/SS/2005 and in criminal case no.1376/SS/2005. Both these applications may be disposed off by the common order as the facts are almost similar and parties are also the same.

3. According to the complainant, he had advanced friendly loan of Rs.7,50,000/- to the accused respondent during the year 1998-99 and on 15-3-1999 he also

executed a declaration styled as 'I Owe You' for repayment of the said amount with interest. On 12-12-2001 he issued two cheques of Rs.3,50,000/- each and these cheques were presented for encashment on 13-12-2001. However, they were dishonoured on 15-12-2001 on the ground of 'Insufficient Funds'. On 28-12-2001 the applicant had issued a notice to the accused respondent but he failed to make the payment. About this he filed a complaint which came to be registered as criminal case no.208-SS-2005. According to the applicant on 23-1-2001 the respondent had issued one cheque of Rs.1 lakh in his favour. That cheque was presented for encashment but it came to be dishonoured on 28-3-2001 on the ground that payment was stopped by the drawer. About this notice was issued on 12-4-2001 but in spite of receipt of the notice respondent failed to make the payment. About this, another complaint was filed by the applicant, which came to be registered as criminal case no.1376/SS/2005.

4. In both the cases, it was the contention of the accused respondent that he and his wife were the partners of the firm M/s. Ashar Engineers. The applicant was also partner in the said firm. The applicant and the respondent both were allowed to operate bank account of the firm. Misusing his

authority the applicant had illegally transferred the amount of Rs.7,50,000/- from the firm's account to his individual account about which the respondent had made a complaint to the bank and after enquiry by the Banking Ombudsman, illegal transfer of the amount was restored to the firm. About that incident some complaints were filed by the respondent's wife. According to the respondent, the complainant had kidnapped himself and his family members and forced him to put signatures on blank cheques about which his uncle had lodged a report but it was treated as non-cognizable offence. The learned trial Court while acquitting the accused respondent noted the above circumstances, which were almost admitted by the applicant in the cross-examination. The learned trial Court also noted that signature of the respondent on the cheques were in black ink while all the other contents including name of the payee, amount, date, etc. were in different handwriting and not in the handwriting of the respondent. The learned trial Court also noted that even according to the admission of the applicant as soon as the respondent received the notice, he had taken the above pleas in reply. After taking into consideration the conduct of the applicant and all the circumstances, the learned trial Court found that the applicant had failed to prove that cheques were issued by the

respondent in discharge of his liabilities.

5. After going through the reasons given by the trial Court and the above circumstances, I find that there is no substance in the appeals. It will not be in the interest of justice to grant leave to prefer appeal in such matters.

6. Leave refused. Both the applications stand rejected.

(J.H.Bhatia,J.)